

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 456A.38, the Natural Resource Commission hereby amends Chapter 21, "Agricultural Lease Program," Iowa Administrative Code.

The purpose of this rule making is to adopt rules for the administration of the Lease to Beginning Farmers Program. This program gives certified beginning farmers the opportunity to obtain agricultural leases on lands managed by the Department of Natural Resources (Department) before those leases are made available to the general public. This program has been in effect since 2013, when authority for this program was established by 2013 Iowa Acts, House File 457, and signed by Governor Branstad on April 24, 2013. Over the past three years, the Department has entered into approximately 150 leases with beginning farmers. These amendments are being incorporated into the Department's existing agricultural lease program requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 7, 2016, as **ARC 2831C**. A public hearing was held on January 11, 2017. One comment, which contained several suggestions, was received from the Iowa Farm Bureau Federation (IFBF) during the comment period.

The following changes from the Notice were made in response to the comment received. Paragraph 21.4(1)"c" was changed to include the cost of establishment or maintenance of water quality practices, vegetation management, and food plots in the criteria used to establish lease payments. These are practices utilized by the Department in the agricultural lease program, and the Department agrees that they should be factored in to the annual lease payments. Subrule 21.6(4) was changed to clarify that the lease shall serve as the written agreement fixing the time of termination of the tenancy, and the lease shall terminate at the end of the agreed-upon lease term without notice. This change provides additional clarity to the rule while maintaining the flexibility required by the Department to meet management objectives. The Department has determined that many of the other changes suggested by IFBF can be more appropriately addressed through revision of the Department's standard lease language outside of the context of this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 456A.38.

These amendments will become effective April 5, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **571—21.2(456A)**:

"*Agricultural land*" means land suitable for use in farming.

"*Authority*" means the Iowa finance authority created in Iowa Code section 16.1A.

"*Beginning farmer*" means an individual, partnership, family farm corporation, or family farm limited liability company, with a low or moderate net worth that engages in farming or wishes to engage in farming.

"*Farming*" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by rule by the authority.

"*Program*" means the lease to beginning farmers program as provided in Iowa Code section 456A.38.

ITEM 2. Rescind rule 571—21.4(456A) and adopt the following new rule in lieu thereof:

571—21.4(456A) Lease to beginning farmers program. The department shall annually lease agricultural land that it holds or manages as wildlife habitat in each county to beginning farmers seeking to participate in the program. The department is not required to lease agricultural land under the program that it would not otherwise lease for farming.

21.4(1) *Establishing annual lease payments.* The department shall establish annual lease payments for available agricultural land under the program by using the following criteria:

- a. Market factors.
- b. Prior leases for the same or comparable agricultural land.
- c. The cost of the establishment or maintenance of water quality practices, soil conservation practices, wildlife habitat, vegetation management, or food plots, if applicable.

21.4(2) *Eligibility to participate.* A beginning farmer is eligible to participate in the program following certification as a beginning farmer by the authority based on the following criteria:

- a. The beginning farmer is a resident of the state of Iowa.
- b. The beginning farmer has sufficient education, training, or experience in the type of farming required under the lease agreement.
- c. The agricultural land and agricultural improvements shall only be used for farming by the beginning farmer, the beginning farmer's spouse, or the beginning farmer's minor children.
- d. Other criteria as the authority prescribes by rule.

21.4(3) *Selection of beginning farmer.* The department shall execute a lease with a beginning farmer selected to participate in the program after such person has been certified by the authority. If two or more beginning farmers seek to execute a lease under the program for the same agricultural land, the department shall select the beginning farmer by drawing lots. At the end of the lease term, a beginning farmer who leased agricultural land under the program is eligible to be selected again to lease the same agricultural land. However, the department shall provide preference to an available beginning farmer who has not previously participated in the program.

21.4(4) *Terms of the lease.* The department shall establish terms and conditions in the lease for beginning farmers participating in the program. The lease executed by the department under the program shall at least include all of the following:

- a. The number of acres leased. The department shall not lease more than 240 acres of agricultural land to a beginning farmer for the production of crops. However, this restriction does not apply to agricultural land leased for grazing livestock or land leased by a beginning farmer under rule 571—21.5(456A).
- b. The term of the lease. The term may be based on the use of the agricultural land. A lease shall not be for more than seven years. A beginning farmer shall not sublease the agricultural land.
- c. The required and permitted uses of the agricultural land during the term of the lease. The department may require the establishment of a conservation system, crop rotation, or cover crop, if appropriate. The department may require that a beginning farmer adopt generally accepted farming or soil conservation practices, so long as such practices are compatible with the department's policies related to resource management and outdoor recreation.

ITEM 3. Adopt the following **new** rule 571—21.5(456A):

571—21.5(456A) *Alternative lease procedures.* In the event that no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program for a given lease, the following procedures shall be followed by the department in administering the agricultural lease program.

21.5(1) *Advertising for bids.* A notice advertising for bids shall be published in at least two local newspapers a minimum of two weeks prior to the date of the bid opening.

21.5(2) *Prebid informational meeting.* A prebid informational meeting may be held when the land manager determines that a meeting is in the state's best interest. Notice of a prebid informational meeting shall be included in the advertisement for bids and in the written instructions to bidders. The meeting shall be held no later than one week prior to the bid opening. If a prebid meeting is required, bidders must attend to qualify to submit a bid.

21.5(3) *Form of bid.* Written sealed bids shall be utilized.

21.5(4) *Public bid opening.* All sealed bids shall be publicly opened as stated in the notice for bids. The results of the bids shall be made available to any interested party.

21.5(5) Awarding of lease. The amount of the bid, past experience with the bidder, the bidder's ability to comply with the terms of the lease, and the bidder's ability to perform the required farming practices shall be considered. The department reserves the right to waive technicalities and reject any or all bids not in the best interest of the state of Iowa.

21.5(6) Negotiated leases. The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

- a. No bids are received.
- b. Gross annual rent is \$5,000 or less.
- c. Where land acquired by the department is subject to an existing tenancy.
- d. To synchronize the lease period of newly leased areas with other leases in the same management unit.
- e. Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.
- f. Where the director authorizes a lease as a condition of a land purchase or trade.

ITEM 4. Adopt the following new rule 571—21.6(456A):

571—21.6(456A) Terms applicable to all agricultural leases. The following terms and conditions apply to all department agricultural leases entered into pursuant to rule 571—21.4(456A) or 571—21.5(456A).

21.6(1) Final approval of award. All awards of leases shall be approved by the director. Additionally, awards of all leases on sovereign land shall be subject to approval by the state executive council on recommendation of the natural resource commission.

21.6(2) Payment of cash rent. The operator shall pay a minimum of 10 percent of the total gross rent at the time of the signing of the lease and the balance for each crop year on or before December 1, or the operator shall pay 50 percent of the total annual rent each April 1 and the balance for each crop year on or before December 1. The appropriate minimum payment shall be determined by the land manager.

21.6(3) Payment of crop share rent. The operator shall pay the total annual rent on December 1 or at the time of harvest, whichever is later.

21.6(4) Termination. In accordance with Iowa Code chapter 562, the lease shall serve as the written agreement fixing the time of termination of the tenancy. The lease shall terminate at the end of the agreed-upon lease term without notice. If the department requires leased land for other conservation purposes during the term of the lease, the operator shall relinquish all rights under the existing lease, upon demand by the director, at the end of the current crop year.

21.6(5) Termination for cause. If the operator fails to comply with any of the terms of the lease, the department may serve notice on the operator demanding redress within a specified period of time. If compliance is not made within the specified period, the department may proceed to collect any moneys which may be due and payable during the crop year in which the lease is terminated and may void the remainder of the lease. Further, the department shall have a landlord's lien as set out by Iowa Code chapter 570.

21.6(6) Previous agreements. The department shall recognize legal agreements regarding agricultural leases which are in effect at the time the department acquires jurisdiction to the land covered by those legal agreements.

21.6(7) Amendment to lease. Amendments to any lease shall be evidenced by written instruments attached to and made a part of the lease. Final approval of amendments shall be made by the director.

ITEM 5. Amend **571—Chapter 21**, implementation sentence, as follows:
These rules are intended to implement Iowa Code sections 461A.25, 456A.24(2), ~~and~~ 456A.24(5),
and 456A.38.

[Filed 2/9/17, effective 4/5/17]

[Published 3/1/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/1/17.